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## Labor

### Suspension - Benefits

Where a labor union claims that a police officer should be paid back-benefits that accrued during a period of suspension, that claim should, based on this court's analysis of G.L. §42-28.6-13, be allowed in part and denied in part.

"In this Declaratory Judgment action, the Plaintiff International Brotherhood of Police Officers, Local 569 (the Plaintiff), contends that pursuant to G.L. 1956 §42-28.6-13(G), the De-

fendant City of East Providence, Police Department (the City), is liable for the payment of back benefits to Officer Jason Francis of the East Providence Police Department (Officer Francis) after he was acquitted of criminal charges and the related work suspension was lifted. The City contends that it is not required to reimburse Officer Francis for the period during which his first suspension overlapped with a pending second suspension, both suspensions being due to separate criminal charges. ...

"It is undisputed that Officer Francis was entitled to back benefits for the period between May 28, 2005 and July 29, 2006, the day before the second set of charges was brought. That is because the suspension during that period only could have been attributable to the first set of charges, and those charges resulted in an acquittal.

"The suspension period between the July 30, 2006 second set of charges and the February 22, 2007 acquittal, presents a closer inquiry, however. There is no question that during this latter period, Officer Francis already was under suspension stemming from the first set of charges. He also was subject to suspension as a result of the second set of charges. However, although the City had the discretion to immediately impose a second, overlapping suspension upon Officer Francis as a result of the second set of charges, it did not do so until after the February 22, 2007 acquittal.

"According to the March 5, 2007 notice, the City of East Providence notified Officer Francis that his suspension would continue pursuant to §42-28.6-13(G) in light of the second set of charges, and that the suspension would be 'effective retroactive to July 30, 2006.' Officer Francis maintains that this action constituted an abuse of discretion; however, common sense would dictate that there was no need to suspend an officer who already was

serving a suspension. Indeed, considering that he was on suspension at the time of the second set charges, it might well have been a waste of resources to impose a concurrent suspension on July 30, 2006. That is because a suspended officer is entitled to a prompt hearing (see Section 42-28.6-4); however, if Officer Francis had been convicted on the first set of charges, he may have been dismissed and the City would not have needed to afford him a hearing on the second suspension. See §42-28.6-13(I). It was only after Officer Francis was acquitted that notice of second suspension was necessary.

"Furthermore, viewing the statute as a whole, this Court concludes that the Legislature did not intend to require the award of back benefits to an officer who, while acquitted of one set of felony charges, nevertheless faces conviction on another set of felony charges. Indeed, such an interpretation would lead to an absurd result."

*International Brotherhood of Police Officers, Local 569 v. City of East Providence, Police Department (Lawyers Weekly No. 61-105-07) (6 pages) (Gibney, J.) (Providence Superior Court) (C.A. No. PC/07-3326) (Sept. 11, 2007).*